

PERAC BRINGS THE COMMISSION TO THE PUBLIC

Holds Commission Meeting in Norwood, MA

By Michael DeVito

Director of Strategic Planning,
Management and Public Affairs

On June 29, 2016 the Public Employee Retirement Administration Commission held a formal Commission meeting in Norwood, Massachusetts. The goal of the Commission's outside meetings is to "Bring the Commission to the Public" - to afford easy access to Commission meetings on a periodic basis to retirement board personnel, public officials, and, most importantly, the general public.

Among the topics discussed at the June 29 meeting were: an Actuarial Update on the state of the systems; PERAC's Monthly Reports; the Executive Director's Report, including such topics as an update on the Massachusetts Association of Contributory Retirement Systems (MACRS) Spring Conference, an update on several retirement board-specific situations and an update on the September 15, 2016 Emerging Issues Forum.

Why Regional Meetings?

PERAC Chairman Philip Y. Brown suggested the idea to the Commission. He encouraged the initiative as a means of bringing Commission members and the Commission's formal agenda together - front-and-center - with the general public and the agency's key constituencies around the state.

Chairman Philip Y. Brown noted:

Bringing actual formal Commission meetings to different regions of the state makes great sense. High up on the Commission's list of goals and objectives are transparency, openness and inclusiveness in the Commission's operations. We want our outreach through these meetings to represent an example of our commitment as a deliberative body to these important principles. We intend to "practice what we preach" by making our own activities more transparent and accessible to the public, as we continue to encourage the retirement boards to be more accessible to the constituencies they serve - and especially to our ultimate constituency - the citizens of the Commonwealth.

PERAC's Executive Director Joseph E. Connarton seconded Chairman Brown's view on the value of external meetings:

"Bringing the Commission to the Public" is an idea that extends our policy of outreach not only to our specific constituencies but also to the general public. The public has a right-to-know and a right-to-see how our agency conducts its business - not only in the promulgation of our decisions - but also to personally witness the deliberation process itself." ■



Meeting was well attended by the public



Commissioners Sullivan and Fitzpatrick



Commissioner Dooling, Chairman Brown and Commissioner Fallon



Executive Assistant Kim Boisvert with Commissioners Machado and McCarthy

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Save the Date!

12th Emerging Issues Forum

September 15, 2016, 9:00 a.m. to 3:00 p.m.

2016 STATE VALUATION STUDY

By James Lamenzo
Actuary

Two charts from the January 1, 2016 actuarial valuation report of the State Retirement System (SRS) are presented on this page. The bar chart shows the unfunded actuarial liability (UAL) for the SRS since 1990. The UAL represents the actuarial accrued liability less the value of plan assets. (When there is no UAL, the system is said to be fully funded.) As of January 1, 2016, the actuarial liability was \$37.0 billion and the actuarial value of plan assets was \$23.5 billion. The difference of \$13.5 billion is the UAL, which represents a \$2.5 billion increase from the 2015 valuation.

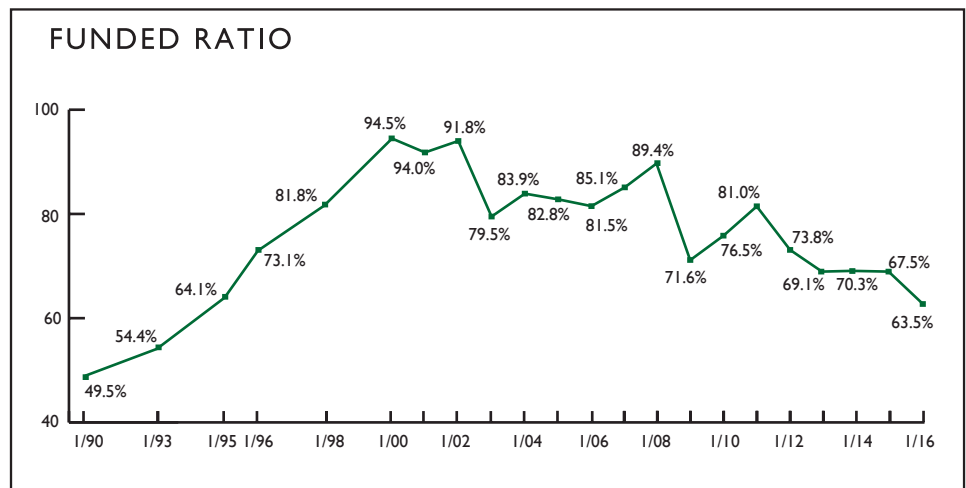
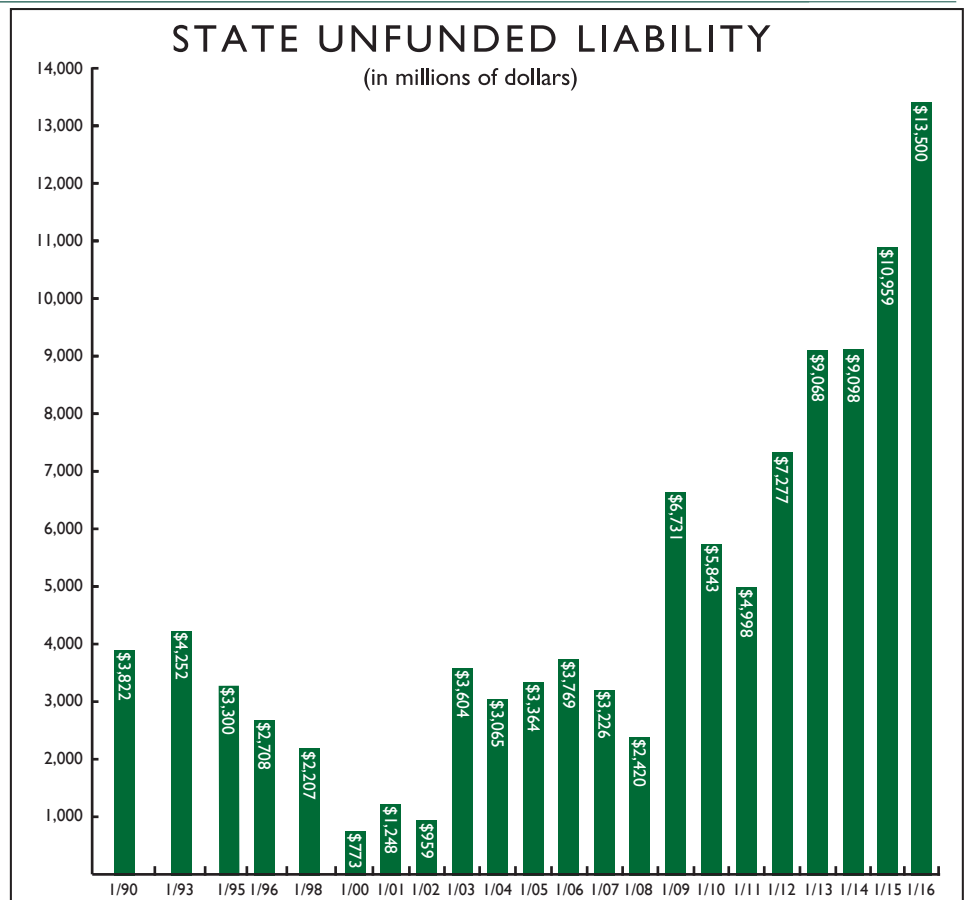
This increase primarily reflects a change in the investment return assumption as well as two plan amendments. The investment return assumption decreased from 7.75% to 7.5%. This change increased the actuarial liability (and correspondingly the UAL) by \$933 million (a 2.6% increase in actuarial liability).

Early Retirement Incentive

Chapter 19 of the Acts of 2015 established an early retirement incentive (ERI) program for State employees. The law provided that eligible members who elected to participate had their retirement allowances determined by adding 5 years to age and/or creditable service (any combination in full years). All members retiring under the ERI had a date of retirement of June 30, 2015. The ERI was taken by 2,487 members. The increase in actuarial liability due to the ERI was \$230 million. The full ERI report is available on our website (mass.gov/perac).

Optional Retirement Plan Transfers

Chapter 176 of the Acts of 2011, An Act Providing for Pension Reform and Benefit Modernization made a number of changes to the Chapter 32 pension law. One of the changes concerns the Optional Retirement



Plan (ORP), a defined contribution plan for higher education employees. The law provided a one-time opportunity for ORP members (and former ORP members) to transfer to the State Retirement System (SRS) and purchase service for the period while subject to the ORP. The amount of payments required is the greater of the ORP balance less employer funded contributions and the amount that would have otherwise been paid into the SRS had these

employees been members of the SRS plus interest for the period spent as an active member of the ORP.

In the 2016 valuation, approximately 1,450 members formerly in the ORP were included in the data provided to us. SRS has indicated that ultimately approximately 1,600 will be included. We estimate the total increase in actuarial liability for ORP

(Continued next page)

transfers to be \$400 million. The determination of assets to be transferred to SRS is still in process and only about \$20 million has transferred as of December 31, 2015.

During 2015 there was an overall actuarial loss of \$439 million. There was a non-investment related loss (loss on actuarial accrued liability) of \$304 million due primarily to pay for continuing members being greater than expected. There was a loss of approximately \$135 million on the actuarial value of assets. The return on assets was approximately 7.1% on an actuarial value basis, compared to 1.1% on a market value basis.

You can find more detail on pages 4 through 7 of the *State Retirement System Actuarial Valuation Report* found on our website.

It is important to note that plan assets have grown faster than plan liabilities since 1990. As of January 1, 1990, the actuarial accrued liability was approximately \$7.5 billion and assets were \$3.7 billion resulting in a \$3.8 billion UAL. Since 1990, the actuarial liability has grown by about 4.9 times while assets have grown by about 6.4 times. For this reason, the funded ratio represents a better measure of the plan's funded progress. The funded ratio equals the actuarial value of plan assets divided by the actuarial accrued liability. When the funded ratio reaches 100%, a system is fully funded. The funded ratio chart shows the progress made by the SRS in the past 26 years.

The 2008 investment loss significantly impacted the UAL and funded ratios for the State Retirement System, as it did for all systems. However, despite the 2008 loss, the SRS has an average return of approximately 9.4% per year since 1985. This exceeds the investment return assumption of 7.5% effective as of January 1, 2016. If you draw a straight line from the 1990 to the 2016 funded ratio, the line is moving

upward to the right. This demonstrates the funding progress that has been made. Some argue that the plan was 94.5% funded on January 1, 2000 and has moved backward the past decade. I would argue that getting to that level in 2000 was a case of getting "too much, too soon." The system earned about 12.6% per year from 1985 through 2000. Under more normal circumstances, the funded ratio graph would not have increased so steeply in the 1990s. In fact, if the actual returns from 1985 to 2013 had been exactly 9.4% EACH year, the graph would move slowly upward to the right and most impartial observers would agree significant funding progress had been made.

We indicated earlier that the actuarial liability as of January 1, 2016 increased \$933 million to reflect a reduction in the investment return assumption from 7.75% to 7.50%, the adoption of the Early Retirement Incentive increased the actuarial liability by \$230 million, and we estimate the transfers from the Optional Retirement Plan increased the actuarial liability by \$400 million. In addition, there have been a number of other plan and assumption changes in the past 6 years that have increased the State's actuarial liability. These changes include a reduction in the investment return assumption from 8.25% to 8.0% as of January 1, 2013, a reduction in the investment return assumption from 8.0% to 7.75% as of January 1, 2015, annual adjustments to the mortality assumption including the change to a fully generational assumption as of January 1, 2015, the adoption of a \$13,000 COLA base, the transfer of active members of sheriff departments in six counties, and the transfer of former members of the Massachusetts Turnpike Authority Retirement System to the State.

Including the changes as of January 1, 2016, the actuarial liability is approximately \$3.9 billion greater than it would have been using the 2010 basis. Therefore, on a com-

parable basis with the 2010 plan provisions and assumptions, the UAL on January 1, 2016 would be \$9.6 billion and the funded ratio would be 71.1%.

Please note: The results presented on the prior page pertain exclusively to the State Retirement System. The State Retirement System is one of the four components of the Commonwealth of Massachusetts pension valuation. The other three components are the Massachusetts Teachers' Retirement System, Boston Teachers, and the Cost of Living Allowance Reimbursements to Local Systems. ■



*By Judith Corrigan
Deputy General Counsel
Managing Attorney*

On April 6, 2016, the Supreme Judicial Court of Massachusetts (“SJC”) issued a determination in the matter of *Bettencourt v. PERAC*, 474 Mass. 60. This decision concludes an eight year legal battle involving six separate courts. The SJC has decided that a pension forfeiture is a fine within the meaning of the Eighth Amendment to the United States Constitution (“the Eighth Amendment”). It also concluded that when a pension forfeiture is found to be excessive, it must be halted.

In 2004 Edward Bettencourt (“Bettencourt”), then a lieutenant in the Peabody Police Department, while acting as Watch Commander, hacked into the Commonwealth’s Human Resources Division’s website. He created 21 bogus accounts on the website to view the Civil Service examination scores of other police officers, including his competitors for the Captain’s exam. He was convicted in 2008 of 21 counts of violating G.L. c. 266, Section 120F, Unauthorized access to [a] computer system. The judge fined him \$500 per count, for an aggregate fine of \$10,500, and did not impose any jail time. Bettencourt also lost his job because of his convictions.

Massachusetts General Laws, Chapter 32, Section 15(4) provides that a member may not receive a retirement allowance if he has been convicted of a criminal offense related to his position. The statute does

not differentiate between a “misdemeanor” and a “felony.” When Bettencourt applied for his superannuation retirement allowance in 2008, the Peabody Retirement Board (“the Board”) granted his request. PERAC, reviewing the approval, reversed the Board’s decision, concluding that Bettencourt was not eligible to receive a retirement allowance because he had been convicted of criminal offenses related to his position. Bettencourt sued PERAC in Peabody District Court, thus beginning a years-long judicial quest to get his retirement allowance.

PERAC prevailed on the issue of whether these crimes were related to Mr. Bettencourt’s position. When the Appeals Court made that determination in 2012, it returned the case to the Peabody District Court on the sole issue of whether the forfeiture of Bettencourt’s pension constituted an excessive fine under the Eighth Amendment.

The amount of pension to be forfeited in this case was \$659,000, plus an unknown amount related to health insurance.

The Eighth Amendment, ratified in 1791, provides that “Excessive Bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” The Excessive Fines Clause has rarely been used, and the first time the Supreme Court of the United States (“SCOTUS”) used it to halt a particular forfeiture was 1998, in the case of *United States v. Bajakajian*, 524 U.S. 321 (1998).

The Bajakajian case established a three prong test for determining if a payment is a fine for purposes of the Eighth Amendment: As noted in *MacLean v. State Board of Retirement*, 423 Mass. 339 (2000), Bajakajian requires “us to consider first, whether there was an extraction of payments, second, whether any extraction was punitive, and third, whether any puni-

tive extraction was excessive.” *Id.*, at 346.

The MacLean case arose fairly soon after the decision in Bajakajian, and the SJC in MacLean conducted its Excessive Fines analysis entirely on the third prong of Bajakajian, “assuming, without deciding” that the Eighth Amendment would be applicable to a pension forfeiture. See, MacLean at 346. Accord *Maier v. Retirement Board of Quincy*, 452 Mass. 517, 522 (2008), and *Flaherty v. Justices of the Haverhill Division of the District Court*, 83 Mass. App. Ct. 120, 123 (2013). In each of these cases, the courts decided the loss of the pension was not excessive.

In the Bettencourt case, PERAC argued, among other things, that there was no forfeiture here because there was nothing to “extract.” It is not a payment to the sovereign of money already possessed by the member. The SJC wrote:

... We disagree with PERAC that the phrase “extract payments ... in cash or in kind,” as used by the Supreme Court in *Austin*, 509 U.S. at 609–610, 113 S.Ct. 2801, and *Bajakajian*, 524 U.S. at 328, 118 S.Ct. 2028, means that there literally must be a physical transfer of tangible property from the individual to the State; “property” exists in tangible and intangible form. Bettencourt, at 69.

The SJC also determined that the forfeiture constitutes punishment, as it only happens following a conviction “and it cannot be imposed on an employee who is not convicted of committing such an offense.” *Id.*, at 71.

Finally, the SJC decided that, as to Bettencourt, the fine was excessive and he should be allowed to have his pension. All future cases will be decided on their particular facts, and the SJC also invited the Legislature to act to possibly amend the pension forfeiture law. ■

ONLINE DATING AND INVESTMENT FRAUD: ALWAYS CHECK YOUR SOURCES

Source: *FINRA Investor Highlights*

With the increase in popularity of online dating with adults in their 50's and 60's the Financial Industry Regulatory Authority (FINRA) has highlighted the potential for fraud related to online dating.

In addition to the potential of being exposed to phishing scams, where strangers attempt to obtain your personal and financial information, there have been many cases where con artists will convince you to send them money, either for a supposed financial emergency or for the fare to go see you.

The latest scam FINRA has been made aware of with online dating is investment fraud where your online love interest presents a "can't lose" investment to you.

They offer the following tips to protect yourself against potential fraud:

1. Research the person. Use FINRA's free online tool, BrokerCheck or the Security and Exchange Commission's Investor.gov website.

2. Ask questions. Require that the individual provide you with facts and hard numbers, which takes the romance out of the discussion. Make sure you understand what it is you are buying into. Some of their suggested questions include:

- What are the risks of this investment?
- How much does it cost?
- What ongoing costs will I have to pay?
- How liquid is this investment? Can I readily cash out?
- Is the investment registered?

3. Know the warning signs of fraud. Quick profits, guaranteed returns or pressure to close a deal right away are just some of the red flags.

Visit FINRA.org for more information. If you suspect investment fraud, you can send a tip or file a complaint with FINRA or with the SEC.

To send a tip -

You can use their online regulatory form available on their website or you can mail or fax a tip to:

FINRA - Regulatory Tips
1735 K Street, NW
Washington, DC 20006-1500
Fax: (866) 397-3290

FINRA recommends you visit the Investor Complaint Center on their website before you file a formal complaint.

To file a complaint with the SEC -

Securities and Exchange Commission
Complaint Center
100F Street, NE
Washington, DC 20549-5990

Protect yourself to reduce your chances of finding fraud at first click. ■

REGISTER TODAY!

PUBLIC EMPLOYEE RETIREMENT ADMINISTRATION COMMISSION

12th
**EMERGING
ISSUES
FORUM**

where: **Hogan Conference Center**
College of the Holy Cross, Worcester, MA

when: **September 15, 2016**
9 am to 3 pm
Register online at EIF2016.eventbrite.com

note! Attendance = **3** educational credits for Board Members

9.15.16 9.15.16 9.15.16

PERAC

A BILL BECOMES LAW: A CASE STUDY

How the PERAC-proposed H. 3266 became Chapter 77 of the Acts of 2016

By Michael DeVito

Director of Strategic Planning,
Management and Public Affairs

H. 3971 (formerly H. 3566), PERAC's bill related to concurrent beneficiary benefits passed the legislature and was signed into law by Governor Charlie Baker on April 13, 2016 as Chapter 77 of the Acts of 2016.

There were roughly 6 major steps in the process of how it started at PERAC and ultimately became law:

1. Situational Observation and Issue Identification;
2. Issue Presentation;
3. Policy Evaluation and Determination;
4. Legislative Formulation;
5. Legislative Implementation and Process; and,
6. Gubernatorial Action.

Situational Observation and Issue Identification.

The essential components of this first step were conducted primarily by PERAC's Legal Unit as it observed the evolving process of what was occasionally termed "the concurrent beneficiaries issue." In a presentation dated March 17, 2016, PERAC's Deputy General Counsel, Judith Corrigan, summarized the gist of the concurrent beneficiaries issue as illustrated in the DALA decision *LARSSON v. STONEHAM RETIREMENT BOARD*:

- Decision issued on August 9, 2013 and was not appealed. Now the final decision of CRAB. CR---10---779
- Member retired for ADR under a presumption, picking Option C and naming his former wife as his Option C beneficiary.
- Member married 2nd wife, and died of the cause for which he had retired.



- Held: Second wife gets a Section 9 benefit, but former wife does not get the Option C benefit.
- The Section 9 benefit extinguishes the possibility of paying out an Option C.

The Larsson decision thus effectively eliminated the previous benefit allocation in which a former wife with a Domestic Relations order (DRO) received the Option C benefit and a new wife received the Section 9 benefit – thus effectively constituting a so-called “concurrent (or two) beneficiaries” situation. This was a situation that the Legal Unit felt was never the intent of the legislature - to create two benefits from one member.

Thus, under Larsson, the first wife – though in possession of a Domestic Relations Order from the court – was effectively denied any benefit. The two benefit problem was resolved but in a manner that appeared clearly unfair and inequitable.

Issue Presentation;

The Legal Unit subsequently elevated the issue at PERAC to the Commission level with a presentation to fully acquaint the Commission with all aspects of this Massachusetts pension policy inequity. The Legal staff had brought the issue to

the attention of the Commission in an almost singularly extensive and inclusive manner.

Policy Evaluation and Decision;

Policy evaluation was overseen by PERAC Chairman Philip Y. Brown as the Commission received the presentation on the Larsson case and its causes and ramifications and discussed the issue subsequent to the presentation. It deliberated the issue at that same meeting and decided that the current law as embodied in the Larsson case was unfair and determined that the policy needed remediation in the statute. The Commission voted unanimously to file legislation.

Legislative Formulation.

The Legal Unit subsequently drafted a legislative proposal which included the following points:

- Effectively prohibited electing two benefits by the member;
- Expressly prohibited two full benefits being paid on account of member;
- Provided that if an ex-spouse is named as an option C beneficiary pursuant to a qualified domestic relations order on file with the retirement board, the option C benefit shall be paid and any amount so paid shall be deducted from the (Continued next page)

Section 9 benefit.

The Commission voted to approve this proposed language on April 8, 2015. It decided not only to file legislation but to seek the filing of a late-filed bill to try to bring this matter to the attention of the legislature as soon as possible. Since the Commission is unable to file legislation as an agency except by the first Wednesday in November prior to the Commencement of a new legislative session, the late-filed bill route was one option it could pursue (there are others) to seek legislative consideration in the current session.

Legislative Implementation and Process:

Commission staff immediately proceeded to seek legislative sponsorship for a late-filed bill. PERAC was fortunate to enlist the strong support of Representative James J. O'Day, Chairman of the legislature's Joint Committee on Municipalities and Regional Government. Rep. O'Day filed the bill on April 13, 2015.

Late-filed legislation must be accepted by the legislature's Rules Committees and if so is afforded the same legislative process as any other bill. The bill was designated as H. 3566, AN ACT RELATIVE TO A TECHNICAL CORRECTION OF THE PENSION STATUTE and was assigned to the Joint Committee on Public Service.

A hearing before that Committee was held on July 21, 2015. Patrick Charles, PERAC's Associate General Counsel testified on behalf of PERAC. There was no other testimony and no opposition was voiced. Due to the strong efforts of Representative O'Day the bill was reported favorably by the Joint Committee on Public Service on November 5, 2015 and was referred to the House Committee on Ways and Means. PERAC wrote to Ways and Means Chairman Brian Dempsey and with his strong support for the agency's objective the Committee reported the bill favor-

ably on January 25, 2016 and changed its number and title to: H. 3971: an ACT FURTHER REGULATING SURVIVORS PENSION BENEFITS AND QUALIFIED DOMESTIC RELATIONS ORDERS. It had a Second Reading in the House on January 27, 2016, then a Third Reading and passed the House on February 24, 2016.

H. 3971 was then referred to the Senate Committee on Ways and Means on February 25, 2016 and with the support of Senator Michael R. Rodrigues, Assistant Senate Majority Whip, H. 3971 was reported favorably on March 24, 2016. It received its subsequent Senate readings by March 31, 2016 and was also passed by the Senate on March 31, 2016.

After final enactment H. 3971 was referred to Governor Baker's desk.

Gubernatorial Review and Action.

With the bill on Governor Baker's desk, PERAC sprang into action with a letter outlining the importance of this bill in providing fairness and equity in this limited but nevertheless important aspect of retirement benefit allocation. PERAC Associate General Counsel Patrick Charles worked closely with the Governor's Assistant Legislative Director Scott Ahern during this review process, which is a maximum of 10 days, providing technical assistance, as needed. PERAC was informed on Wednesday, April 13, 2016 that Governor Baker had signed H. 3971 as Chapter 77 of the Acts of 2016.

Conclusion

This is a condensed version of all of the activities related to this legislative process. Many additional communications - both written and personal - take place during this usually long and involved process which often takes years to achieve - if it ultimately is accomplished at all.

The legislative aspect of this case study

which travelled from filing as a late-filed bill by Representative O'Day on May 13, 2015 though both branches of the legislature and Governor Baker's signature on April 13, 2016 - eleven months to the day after its filing - is not a usual occurrence and should not be expected. The lightning consideration of this bill - especially in light of its limited scope and impact in the Commonwealth - can only be attributed to the exceptional effort and determined support of our lead legislative supporters, Representative O'Day and Senator Rodrigues. In addition, without the Chairs of the respective Ways and Means Committees, Representative Brian Dempsey and Senator Karen Spilka, who debated the bill on the Senate floor on our behalf - this law could not have happened. We thank them for their kind consideration and their great support. We would also like to take this opportunity again to thank all of the other numerous persons at PERAC and in the legislature who made the passage of this legislation possible.

And of course, PERAC wishes to thank Governor Baker for his favorable consideration in signing H. 3971 into law.

Link to the Act: <https://malegislature.gov/Laws/SessionLaws/Acts/2016/Chapter77>

For more information see:
PERAC 2016 Memo #16

PERAC COLLABORATES WITH MACRS AT SPRING CONFERENCE

*By Michael DeVito
Director of Strategic Planning,
Management and Public Affairs*

As is PERAC's custom, and at the invitation of MACRS President, Kathleen Kieley- Becchetti, PERAC staff participated extensively in numerous educational and informational panels at The Kevin J. Regan 2016 Spring MACRS Conference in Hyannis in June.

Bolstering the turnout was the offering Continuing Educational Credits to Board members for attendance at courses as

they seek to meet their three-year, 18-hour requirement. PERAC and MACRS are collaborators on these educational offerings as is detailed in Chapter 176 of the Acts of 2011 which initiated the mandatory continuing education requirements for board members.

Since the initiation of these requirements in 2012, there have been 7,510 course completions by Massachusetts retirement board members, according to PERAC's Compliance Officer Tom O'Donnell.

This year, through August 1, 2016, 800

courses have been completed by participating board members – a number likely to exceed 1000 by the end of the year. These statistics exemplify the success of the PERAC/MACRS team and our other collaborating educational providers in offering up-to-date continuing education in our unique field of endeavor.

PERAC is grateful for this ongoing collaboration. Without MACRS' cooperation and consideration, our task would be considerably more difficult.



Senator John F. Keenan addresses MACRS



MACRS had great participation this year



Attorney Tom Gibson leads the legal panel



Senator James E. Timilty, Senate Chair, Joint Committee on Public Service, speaks at the Legislative Panel



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